

The Intersection of the Investment Advisers Act Rules and OFAC Guidance: A Practical Guide for Investment Advisers

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In this article, William Barry, Brian Fleming, and Margot Laporte discuss the need for registered investment advisers to implement sanctions compliance programs, given the recent expansion in scope of the United States' economic sanctions programs and increase in the number of enforcement actions brought against companies and individuals for U.S. sanctions violations. The U.S. Department of the Treasury Office of Foreign Assets Control (OFAC) has indicated that it is focused on the securities industry with respect to sanctions compliance and enforcement, given the sanctions risks unique to securities firms. The authors discuss registered investment advisers' obligations under the Investment Advisers Act and OFAC sanctions, the intersection of the Investment Advisers Act and OFAC sanctions, current and emerging areas of sanctions risk for investment advisers, and compliance strategies to minimize sanctions risk. Registered investment advisers "should heed OFAC's guidance by incorporating risk-based sanctions compliance measures into their compliance programs as mandated by the Investment Advisers Act. Failure to do so may result in a registered investment adviser's failure to meet its compliance, books-and-records, and reporting requirements under the Act, as well as increased penalties in the event of an OFAC enforcement action," the authors wrote. "Moreover, the fluid nature of sanctions regulations can turn a well-researched, profitable investment into a compliance risk in need of an exit. A nuanced and technical understanding of an adviser's sanctions risks and the relevant sanctions programs thus will help advisers to effectively assess sanctions risk and maximize investor returns."